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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/310,965	05/13/1999	STAN SCHALL JR.	156.0001	9612

25534 7590 04/20/2004

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EXAMINER

MATHEW, FENN C.

ART UNIT PAPER NUMBER

3764

DATE MAILED: 04/20/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 29

Application Number: 09/310,965
Filing Date: May 13, 1999
Appellant(s): SCHALL, STAN

George A. Metzenthin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 22, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-3, 21, and 22 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4768778	Thomas, Jr.	9-1988
5226868	Montgomery	7-1993
Des. 141,456	Karstadt	11-1944
1,533,500	Hovda	5-1924
2,256,001	Titus	3-1940

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Thomas, Jr. (4,768,778). This rejection is set forth in prior Office Action, Paper No. 20 beginning at paragraph numbered 6.

Claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas, Jr.. This rejection is set forth in prior Office Action, Paper No. 20 beginning at paragraph numbered 7.

Claims 1-3, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas, Jr. in view of Montgomery (5,226,868), and Karstadt (Des. 141,456). This rejection is set forth in prior Office Action, Paper No. 20, beginning at paragraph numbered 8.

Claims 6, 7, and 9 are rejected under 35 U.S.C. 102(b) as anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hovda (1,533,500). This rejection is set forth in prior Office Action, Paper No. 20, beginning at paragraph numbered 9.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hovda in view of Titus (2,256,001). This rejection is set forth in prior Office Action, Paper No. 20 beginning at paragraph numbered 10.

(11) *Response to Argument*

With regards to arguments drawn towards claims 1-3 and 21-22, rejected under Thomas in view of Montgomery and Karstadt, applicant's arguments have been found persuasive. The rejection has been withdrawn, and the claims have been considered allowable.

Likewise, applicant's arguments towards claim 16, rejected under Thomas, Jr. alone have also been deemed persuasive. The rejection has been withdrawn, and the claim is allowed.

On page 6-7 of the argument, the appellant states that the phrase "the horizontal plane" does not need antecedent recitation. Examiner points out that the rejection under 35 U.S.C. 112 examines the clarity of the term 'the horizontal plane'. The term in question is relative, and as so, it cannot be derived from the claim language which horizontal plane is being referred to.

With regards to Hova, appellant has argued that the screw, bolt and nut should not be considered as regulating components. Examiner is of the position that the elements could be able to perform the function as to regulate and control rotation

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between the lower housing and upper platform since loosening or tightening the nut on the bolt would change the friction force to some degree. Furthermore, applicant provides no clarity with regards to the level of adjustment, thus the partial threading for Hovda meets the claim limitations in the broadest reasonable light. Applicant has provided no supporting language in the claims limiting the structure of the 'regulating components'. Applicant has also failed to distinctly claim the friction material structurally and has furthermore provided no claim language directed towards the location. As broadly read, the threading of Hovda is seen as a friction material that is part of the 'regulating components'.

With regards to the combination of Hovda and Titus, applicant has argued that the combination is improper. Examiner is of the opinion that rubber footings are notoriously old and well known in the art in order to stabilize and engage with the ground and prevent slippage. Placement of a rubber footing would only affect rotation the ground-engaging disk.

Examiner respectfully points out that Applicant has listed claim 15 as being appealed, but has not provided any arguments traversing the rejection.


For the above reasons, it is respectfully submitted that the rejections of claims 6-9 and 15 should be sustained.

Conferees



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Respectfully Submitted


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